

National Republican Senatorial Committee

ALEX N. VOGEL
GENERAL COUNSEL

Lawrence Norton, Esq.
General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

MUR # 5316

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FEC MAIL
OPERATIONS CENTER
2002 OCT -1 P 3:59

Re: Torricelli for U S Senate, Inc; FEC ID C00306290

Dear Mr. Norton:

This complaint is filed to bring to the attention of the Federal Election Commission the apparently imminent violation of the Federal election laws by the Torricelli for U S Senate, Inc., the authorized principal campaign committee of Senator Robert G. Torricelli ("Torricelli Committee"). The National Republican Senatorial Committee ("NRSC" or "Committee") believes, based upon credible press reports (see attachment) that the Torricelli committee is prepared by transfer some or all of its funds to one or more Democratic Party committees in violation of the federal campaign finance laws. The Torricelli Committee has reported more than \$5 million on hand at this time. Senator Torricelli has declared that he is not a candidate in the 2004 general election for United States Senator from New Jersey. Whether or not his name remains on the ballot (a matter currently in dispute in that the New Jersey State Supreme Court has ordered that his name be removed, which order is being challenged) he will under no circumstances be a "candidate" in that election. Accordingly, as explained below, funds raised for an election in which Senator Torricelli will not be a candidate must be returned to the donors under applicable Federal Election Commission regulations and rulings. Such funds may not be diverted by Senator Torricelli or his Committee to one or more Democratic Party committees.

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In addition to requesting that the Commission investigate this matter pursuant to 2 USC Section 437g, as provided for in the Federal Election Campaign Act of 1971, as amended, the NRSC hereby petitions the Commission for two further immediate actions.

First, the Committee requests that the FEC vote to issue a public Policy Statement notifying all authorized campaign committees that they must return contributions to their contributors in the candidate is not a candidate in the election for which the funds were given. The Commission has in the past recognized that it has authority to issue such statements when issues of importance arise and the Commission had information about its interpretation of the Act to impart.

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PAID FOR AND AUTHORIZED BY THE NATIONAL REPUBLICAN SENATORIAL COMMITTEE

Second, the NRSC requests that the Commission exercise the authority granted it in the Act in 2 U.S.C. § 437d to seek injunctive, declaratory, or other appropriate relief to ensure that the Torricelli Committee does not violate the federal election laws through a transfer of general election funds to any other Committee, rather than returning them to the contributors. While Complainant recognizes that the Commission has not heretofore exercised this power to seek immediate judicial relief, it is appropriate in this case. The potential violation is a facial one, as to which further investigation is not necessary, and the harm would be immediate and irreparable: up to \$5 million dollars in money required to be returned to individual donors would instead be impermissibly spent to effect federal elections (most likely the New Jersey Senate election). Once spent, this violation of law could not effectively be remedied.

APPLICABLE LAW

The Commission's regulations clearly state:

If a candidate is not a candidate in the general election, all contributions made for the general election shall be either returned or refunded to the contributors or redesignated in accordance with 11 CFR 110.1(b)(5) or reattributed in accordance with 11 CFR 110.1(k)(3).

11 CFR 110.1(b) (3) (i) (c). And:

If a candidate is not a candidate in the general election, any contributions made for the general election shall be refunded to the contributors, redesignated in accordance with 11 CFR 110.1(b)(5) or 110.2(b)(5), or reattributed in accordance with 11 CFR 110.1(k)(3).

11 CFR 102.9(e)

The Commission's redesignation and reattribution regulations, referenced above, do not permit the transfer of Torricelli Committee funds to other Committees rather than their "refund or return" to the original contributors.

The Commissions' "Campaign Guide for Congressional Candidates and Committees," sent to the Torricelli Committee and all other federal candidate committees by the FEC, advises candidates (at p. 15, emphasis added) of the effect of these Regulations as follows:

CANDIDATES NOT RUNNING IN AN ELECTION

A candidate is entitled to an election limit only if he or she seeks office in that election. Thus, a candidate who loses the primary **(or otherwise does not participate in the general election) does not have a separate limit for the general.**

Therefore, since Senator Torricelli is not a candidate in the general election, he "does not have a separate limit for the general" and all contributions his committee received for the general election should be refunded.

COMMITTEE WITHOUT A CANDIDATE

The Torricelli committee has apparently been considering the possibility of declaring Torricelli for US Senate Inc. to be "a committee without a candidate." The theory appears to suggest that Frank Lautenberg could then designate the Torricelli Committee as his authorized campaign committee and make use of the \$5 million plus of funds the Committee has on hand. This absurd concept is based on a misinterpretation of a 25 year old FEC Advisory Opinion, AO 1977-16.

In Advisory Opinion 1977-16, the FEC stated that a group concerned about identifying a good candidate to nominate could raise contributions from individuals within the federal limits, file reports as a candidate committee, spend funds to take polls and otherwise determine the best candidate, and at the conclusion of the process have the selected candidate designate the committee as his or her principal campaign committee. Based on the Commission's own words in that Advisory Opinion, however, it is not possible for the Torricelli to become a "Committee without a candidate." The Commission stated:

[T]he Commission recognizes that principal campaign committees come into legal existence under the Act only when designated as such by a candidate for Federal office. However, the Commission does not find any legal basis for barring a political committee from operating under a self-imposed restriction on the amount of contributions it will accept, which restriction coincides with the limits applicable to contributions to a candidate or principal campaign committee(or other authorized committee) of a candidate.

Id.

Here, however, the Torricelli Committee has already been designated as the candidate's principal campaign committee. In that case, therefore, it has already "come into legal existence under the Act" as a principal campaign committee through Senator Torricelli's designation. Indeed, the Torricelli Committee has never had any existence except as Sen. Torricelli's principal campaign committee, a role it cannot now undo. It is not now possible for the Torricelli Committee to shed its legal identity and designation as Senator Torricelli's campaign committee and begin existence anew as a "committee without a candidate." Further, since it already has one cannot, it cannot now acquire another.

EFFECT OF THE LAW ON TORRICELLI COMMITTEE

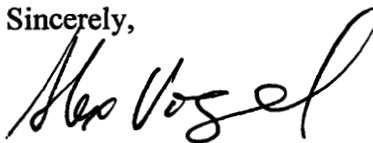
Since Senator Torricelli is not a candidate in the 2002 General Election for the US Senate, his authorized campaign committee does not have the legal authority to retain or make other use of contributions for that election. Rather, the Torricelli Committee must return those funds to the contributors as detailed above. The Torricelli Committee may not designate these funds as "excess campaign funds" pursuant to 2 U.S.C. § 439a and transfer them to another committee because the funds are "not in excess of any amount necessary to defray his expenditures" under § 439a because Senator Torricelli is not a candidate in the general election

and therefore cannot legally have any contributions or expenditures in such election as of the date he ceased to be a candidate in that election.

CONCLUSION

For the reasons stated above, the NRSC requests and petitions the Federal Election Commission to take all necessary and immediate steps to ensure that the Torricelli Committee does not violate Federal election law by transferring its general election funds to any other committee(s), rather than returning it to the original contributors as required by law. As noted above, these steps should include opening an investigation in this matter, but also immediately issuing a general policy statement publicly restating the Commission's regulation's requirement of the return of general election contributions to contributors when a candidate is not participating in the general election. Finally, as appropriate to prevent a serious and irreparable violation of law, the Commission should seek injunctive relief against Torricelli for US Senate, Inc.

Sincerely,



Alex Vogel

District of Columbia : SS

Subscribed and Sworn to before me

this 7th day of October, 2002


Notary Public, D.C.

My commission expires 9/30/2006

Susan E. Yeals

Notary Public, District of Columbia

My Commission Expires 9/30/2006

EST-44-407-1523

TORRICELLI'S CAMPAIGN WARCHEST

"Party officials are now trying to negotiate the transfer of the leftover money from Torricelli's campaign to Lautenberg. When he dropped out, Torricelli had about \$5 million left, and Democrats are trying to add that to the money Lautenberg will raise, as well as to the millions that will come from the Senate Democratic PAC in Washington. Given their rancorous relationship, it is not a given that Lautenberg will get Torricelli's campaign money, though party officials say they expect cooler heads to prevail." (Tom Turcol, "In Senate Race, GOP Can't Afford To Let Torricelli Go," *The Philadelphia Inquirer*, October 6, 2002) (emphasis added)

"Torricelli, after voting on the Senate floor Thursday for the first time since his campaign abdication, said he would do 'everything I can to get Frank Lautenberg elected.' He said he was exploring ways to make his remaining campaign funds available. Senate Majority Leader Tom Daschle, D-S.D., planned to meet with Lautenberg and said campaign funding would be among the likely topics. ... By law, Torricelli cannot give Lautenberg the millions remaining in his campaign treasury. But he could give the money to the state or national party for use in activities that would help Lautenberg." (Laurence Arnold, "Lautenberg Begins Campaign As Courts Weigh His Candidacy," *The Associated Press*, October 3, 2002) (emphasis added)

"Torricelli, who originally opposed having Lautenberg take his place, has so far refused to turn over an estimated \$5 million to \$7 million in campaign funds to the Democratic Senate Campaign Committee or the state Democratic Party to use as 'soft money' to promote Lautenberg's campaign - which is starting out with no money in the bank. Party leaders said Sen. Jon S. Corzine (D-N.J.) was attempting to mediate the controversy." ("Court Orders Lautenberg Put On Ballot," *The Washington Post*, October 3, 2002) (emphasis added)

"Now, party leaders in Washington and Trenton are trying to persuade Mr. Torricelli to send a chunk of an estimated \$7 million in campaign money back to party officials in Washington, who in turn could spend it on ads and get-out-the-vote efforts for Mr. Lautenberg. But they made little headway today, said people close to the Torricelli camp. Democrats are so worried that Mr. Torricelli will not turn over his money that Jon S. Corzine, the freshman New Jersey senator who used his personal wealth to bankroll his own campaign, has discussed the possibility of footing part of the bill for the party's effort in New Jersey, according to a Democratic strategist close to Mr. Corzine. Representative Steven R. Rothman, a New Jersey Democrat, said he hoped Mr. Torricelli would make the money available for the good of the party. 'I don't know what he's going to do,' he said. 'I would hope all grudges are put aside and that everyone, including Senator Torricelli, will fully support Senator Lautenberg.'" (Raymond Hernandez, "The New Jersey Senate Race: Rivals," *The New York Times*, October 3, 2002) (emphasis added)

"Torricelli had more than \$6 million in his campaign fund at the end of the last reporting period. He cannot give that directly to Lautenberg, but sources in Torricelli's campaign expect him to transfer the bulk of it to the national and state Democrats' political action committees. The PACs would be able to spend the cash on 'issue ads' that bolster Lautenberg and batter Forrester." (David Kinney and Jeff Whelan, "Lautenberg's Return - Ex-Senator Is Picked To Run In Torricelli's Place," *The [Newark, NJ] Star-Ledger*, October 2, 2002) (emphasis added)

“When New Jersey Democratic leaders called the Torricelli campaign this afternoon to ask whether he would consider turning over his campaign funds to Mr. Lautenberg, Mr. Torricelli’s aides said they did not dare even forward the question to him. By early evening, Senator Corzine was trying to mediate an agreement that would allow Mr. Torricelli’s money to finance Mr. Lautenberg’s campaign.” (David Kocieniewski, “The New Jersey Senate Race: The Democrats,” *The New York Times*, October 2, 2002) (emphasis added)

EST. 11-40-1525